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# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Customs and  
Patent Appeals and the United States  
Customs Court

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*This issue contains*

C.R.D 76-11

Protest abstracts P76/220 through P76/234

Reap. abstracts R76/113 through R76/116

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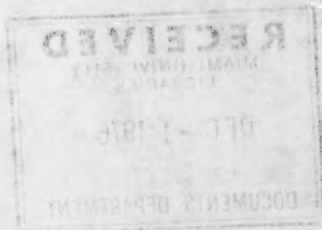
## and Decisions

of the United States Court of Customs and  
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Customs Court



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# Decisions of the United States Customs Court

## United States Customs Court

One Federal Plaza  
New York, N.Y. 10007

### Chief Judge

Nils A. Boe

### Judges

Paul P. Rao  
Morgan Ford  
Scovel Richardson  
Frederick Landis

James L. Watson  
Herbert N. Maletz  
Bernard Newman  
Edward D. Re

### Senior Judges

Mary D. Alger  
Samuel M. Rosenstein

### Clerk

Joseph E. Lombardi

## Customs Rules Decision

(C.R.D. 76-11)

GEHRIG, HOBAN & Co., INC. v. UNITED STATES

OPINION AND ORDER ON PLAINTIFF'S MOTION  
TO VACATE SANCTIONS

Court No. R68/17303

[Motion by plaintiff  
granted in part.]

(Dated October 22, 1976)

Busby Rivkin Sherman Levy and Rehm (Saul L. Sherman and Joseph S. Kaplan  
of counsel) for the plaintiff.

Rez E. Lee, Assistant Attorney General (Joseph I. Liebman and Edmund F.  
Schmidt, trial attorneys), for the defendant.

NEWMAN, Judge: On June 18, 1976 this court granted defendant's motion to impose sanctions on plaintiff pursuant to rule 6.5(b)(2), predicated on plaintiff's failure to comply with the court's order of December 1, 1975, compelling discovery. *Gehrig, Hoban & Co., Inc. v. United States*, 76 Cust. Ct. —, C.R.D. 76-3 (1976). The sanctions were expressly made subject to vacatur if, within sixty days of the order, plaintiff served defendant with supplemental answers to certain interrogatories *fully* supplying the information requested. Further, the court's order provided that plaintiff could comply, either: by identifying the documents mentioned in the interrogatories, or by voluntarily producing such documents for inspection and copying within the sixty days permitted for serving supplemental answers.

Within the sixty-day period granted, plaintiff served defendant with supplemental answers and documentary exhibits. Plaintiff now moves to vacate the sanctions imposed by the order of June 18th. Defendant has interposed no objection to such vacatur, except with respect to interrogatories numbered 24 (a) and (h), and 27 (b) through (e), which defendant contends have not been answered adequately.<sup>1</sup>

While admitting that plaintiff has furnished "some information", defendant insists that the interrogatories seek to elicit, *inter alia*, specific cost, expense and profit figures, not merely a description or enumeration of various types of costs and expenses. Plaintiff on the other hand, urges that the interrogatories requested merely that the figures be "described" and "located", but not "furnished".

The court is constrained to agree with defendant's contention that a reasonable interpretation of the interrogatories in question requires that plaintiff must disclose in its answers not merely an enumeration or description of different types of costs and expenses, but also the figures as well.<sup>2</sup> However, a careful examination of the supplemental answers submitted with plaintiff's motion fails to show that the cost, expense and profit figures were furnished. Despite the assertion of plaintiff's counsel that "detailed cost figures" were submitted in various affidavits and "representative internal cost accounting records", and that "prices are ascertainable from the pleadings herein", the absence of the *pertinent* cost, expense and profit figures in the answers to the interrogatories, leaves the interrogatories inadequately answered.

<sup>1</sup> Defendant concedes that all other interrogatories propounded to plaintiff have been adequately answered.

<sup>2</sup> It is also noted that interrogatory no. 24(a) seeks to elicit disclosure respecting the markets by country in which the costs were incurred, as well as the time period applicable to such costs. However, the footnote on page 19 of plaintiff's supplemental answers states, "On this as on all other similar incidental marketing costs, Charmilles does not maintain separate cost accounting records according to country of designation".

In support of the motion to vacate, counsel for plaintiff has submitted an affidavit detailing plaintiff's efforts to obtain and supply the information requested by the interrogatories and to comply with the court's order. While the facts recited in counsel's affidavit and the substantial supplemental information furnished to defendant clearly demonstrate plaintiff's good faith efforts to comply with the order of June 18th, the court must nevertheless agree with the defendant's position that "plaintiff should \* \* \* be precluded from surprising the defendant at trial by 'discovering' additional evidence (i.e., testimony or other means) that falls within the scope of these interrogatories".

It is well settled that the purpose of our discovery rules is to open door of pretrial inquiry to the point where information which is relevant to the subject matter involved in the pending action, and normally in the possession or control of one party, may be obtained by the other in the interests of truth and justice, and to remove the element of surprise from the litigation. A party should not in any event be required to await a trial of the action to discover for the first time facts and circumstances which might have been of assistance in that party's pretrial preparation, and would have in all likelihood apprised that party of the disputed issues.

Candidly, this court is greatly anguished by the substantial time, labor and expense on plaintiff's part necessitated herein by the broad scope of the propounded interrogatories. But on the other hand, the scope of the information requested by defendant is merely reflective of the broad scope of plaintiff's claims and the apparent complexity of the issues. The pleadings indicate that the merchandise was appraised on the basis of United States value pursuant to section 402(c) of the Tariff Act of 1930, as amended. Plaintiff claims that the proper basis for appraisement is export value as defined in section 402(b), as amended; or in the alternative, United States value pursuant to section 402(c), as amended; or alternatively, constructed value under section 402(d), as amended. It is plain, then, that plaintiff's multiple alternative value claims interject many issues into this reappraisement case and have opened the door to the breadth of discovery with which plaintiff is faced here.

It is the conclusion of the court that interrogatories numbered 24 (a) and (h), and 27 (b) through (e), have not been properly responded to by plaintiff in its supplemental answers. However, under all the facts and circumstances, and in view of the good faith efforts demonstrated by plaintiff herein, the order of June 18, 1976 is modified as follows:

1. Plaintiff is granted an additional sixty days in which to furnish defendant with further supplemental answers disclosing the cost,

expense and profit figures (and all the other information) sought to be elicited by interrogatories numbered 24 (a) and (h), and 27 (b) through (e). Should plaintiff fail to comply with the foregoing directive, it shall be precluded from introducing at trial of the issues in this action, or presenting in conjunction with the filing of a dispositive motion, any evidence which is related to the answers presently sought by defendant respecting interrogatories numbered 24 (a) and (h), and 27 (b) through (e).

2. In all other respects, plaintiff's motion for vacatur is granted.

It is well settled that the purpose of our discovery rules is to open doors of proof and to the point where information which is relevant to the subject matter involved in the pending action and not merely in the possession or control of one party, may be obtained by the other in the interest of truth and justice, and to remove the barrier of secrecy from the litigation. A party should not in any event be required to await a trial of the action to discover for the first time facts and circumstances which might have been ascertained in due time by a prudent preparation and would have been all disclosed at that party of the disputed issues. If that has occurred, the court will not grant discovery. This court is greatly assisted by the substantial time labor and expense on plaintiff's part necessitated herein by the broad scope of the proffered interrogatories. But on the other hand, the scope of the information requested by defendant is merely reflective of the broad scope of plaintiff's claims and the apparent complexity of the issues. The pleadings indicate that the merchandise was acquired on the basis of United States value pursuant to section 102(e) of the Tariff Act of 1930, as amended. Plaintiff claims that the proper basis for appraisal is export value as defined in section 102(d) as amended or in the alternative, United States value pursuant to section 102(e), as amended, or alternatively, constructed value pursuant to section 102(f) as amended. It is plain, then, that plaintiff's multiple alternative claims interest may issue into this respectment case and have opened the door to the breadth of discovery which plaintiff is seeking. It is the conclusion of the court that interrogatories numbered 24 (a) and (h), and 27 (b) through (e), have not been properly answered by plaintiff in its supplemental answers. However, under all the facts and circumstances and in view of the good faith efforts demonstrated by plaintiff herein, the order of June 18, 1970 is modified as follows:

1. Plaintiff is granted an additional sixty days in which to furnish defendant with further supplemental answers disclosing the cost

# Decisions of the United States Customs Court

## Abstracts Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, October 26, 1976.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate			
P76/220	Landis, J. October 14, 1976	Ataka America, Inc., et al.	74-5-01275, etc.	Item 708.71 22%, 21% and 20%	Item 708.80 21%, 18% or 15%		Olympus Corp. of America v. U.S. (Q.D. 4598)	New York Various parts of micro- scopes
				Item 708.72 25%, 22% and 20%				
				Item 708.73 31%, 27% and 22.5%				



## CUSTOMS COURT

DECISION NUMBER	JUDGE AND DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Per. or Item No. and Rate	HELD Per. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
F76/221	Landis, J. October 18, 1976	Olympus Corp. of America	74-5-01884	Item 708.73 27% and 22.5%	Item 708.80 18% or 15%	Olympus Corp. of America v. U.S. (C.D. 4538)	New York Various parts of microscopes
F76/222	Malitz, J. October 18, 1976	G. C. Murphy Co.	74-5-01282	Item 737.90 17.5%	Item 734.20 5.5%	Mego Corp. v. U.S. (C.A.D. 1137)	New York Bagatelle game
F76/223	Watson, J. October 19, 1976	Olto Rele & Co. et al.	74-2-00821, etc.	Item 748.20 21%	Item 774.60 8.5%	Joseph Merkoria, Inc. v. U.S. (C.D. 4306)	Seattle Plastic artificial flowers, etc.
F76/224	Newman, J. October 19, 1976	Prestigeline (Div. of Welman Co., Inc.)	74-5-01653, etc.	Item 772.15 8.5% (items marked "A") Item 774.60 or 772.15 10% or 8.5% (items marked "B")	Item 638.40 6.5% or 5.5% (items marked "A" and "B")	Prestigeline (Div. of Welman Co., Inc.) v. U.S. (C.D. 4918) (items marked "A") Agreed statement of facts (items marked "B")	New York Battery operated lamps (items marked "A") Electrical articles (items marked "B")
F76/225	Ford, J. October 20, 1976	Bloomington's, a Div. of Fed. Dept. Stores, Inc.	70/16159, etc.	Item 635.37 17%, 15% or 13%	Item 633.35 9%, 8% or 7%	U.S. v. Morris Friedman & Co. (C.A.D. 1156)	New York Candlesticks, candleholders, etc.
F76/226	Ford, J. October 20, 1976	Bloomington's, a Div. of Fed. Dept. Stores, et al.	71-4-00441, etc.	Item 635.37 19%, 17%, 15%, 13%, 11% or 9.5%	Item 633.35 10.5%, 9%, 8%, 7%, 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D. 1157)	New York Candlesticks, candleholders, etc.



P76/227	Richardson, J. October 20, 1976	Paper Novelty Corp.	74-2-00515, etc.	Item 653.95 8.5%	Item 683.40 5.5%	U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Tree top light sets
P76/228	Maletz, J. October 20, 1976	Larami Corp.	75-12-00310, etc.	Item 737.90 17.5%	Item 734.20 5.5%	Mego Corp. v. U.S. (C.A.D. 1137)	Philadelphia Pinball, bagatelle games, etc.
P76/229	Ford, J. October 21, 1976	B. Altman & Co. et al.	70-0278, etc.	Item 653.37 19%, 17%, 15%, 13%, 11% or 9.5%	Item 653.35 10.5%, 9%, 8%, 7%, 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D. 1158)	New York Candlesticks, candlehold- ers, etc.
P76/230	Ford, J. October 21, 1976	J. T. Steeb & Co., Inc., et al.	73-4-01000, etc.	Item 692.35 6.5% or 5.5%	Item 692.30 Duty-free	Agreed statement of facts	Portland, Oreg. Tractors for agricultural use
P76/231	Landis, J. October 21, 1976	Hancock Gross, Inc.	65/14094, etc.	Item 774.80 17%	Item 775.25 10%	U.S. v. Hancock Gross, Inc. (C.A.D. 1153)	Philadelphia Washers
P76/232	Landis, J. October 21, 1976	Hancock Gross, Inc.	75-8-02108, etc.	Item 680.22 11%	Item 775.25 5%	Hancock Gross, Inc. v. U.S. (C.D. 4555, aff'd C.A.D. 1153)	Philadelphia Washers of rubber or plastic
P76/233	Maletz, J. October 21, 1976	Larami Corp.	75-8-01535, etc.	Item 737.90 28%, 24%, 21%, and 17.5%	Item 734.20 8%, 7%, 6%, and 5.5%	Mego Corp. v. U.S. (C.A.D. 1137)	Philadelphia Pinball, bagatelle games, etc.
P76/234	Maletz, J. October 21, 1976	A. Van De Pol Import Co.	76-6-01535	Item 637.20 9.5%	Item 642.60 5%	Judgment on the pleadings	Mobile "Press Screen Wire Net- ting"

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# Decisions of the United States Customs Court

## *Abstracts Abstracted Reappraisal Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/113	Richardson, J. October 18, 1976	J. C. Cox, Inc.	R65/7370	Cost of production	DM3393.00	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen auto- mobiles
R76/114	Richardson, J. October 19, 1976	Dixie Warehouse, Inc.	R62/8334	Cost of production	DM3339.00	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen auto- mobiles
R76/115	Richardson, J. October 19, 1976	Patrick & Graves	R65/23719	Cost of production	DM3340.00 (type 113); DM3436.40 (type 117)	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen auto- mobiles
R76/116	Richardson, J. October 19, 1976	Patrick & Graves	R67/1339, etc.	Cost of production	At values specified in schedule attached to decision and judge- ment in column de- signated "Claimed Value"	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen auto- mobiles

Judgment of the United States Customs Court  
in Appealed Case

OCTOBER 22, 1976

APPEAL 75-30.—Andy Mohan, Inc. v. United States.—  
CUSTOM-MADE CLOTHING, REAPPRAISEMENT OF—  
CONSTRUCTED VALUE.—C.D. 4593 affirmed July 15, 1976. C.A.D.  
1173.

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